S. Seenivasagam for respondents: My objection to the award is that the potentialities of the land have not been taken into account. (Refers *Sri Raja v. Revenue Officer*[1] and other authorities therein cited). The English decisions apply to the interpretation of the Indian Act (*ib* pp. 320, 321) consequently to the Federated Malay States Land Acquisition Enactment. "Market Value" has been held to include potentialities and the value of the minerals constitutes one of the potentialities which the collector has failed to take into account.

M. C. Hay, Deputy Legal Adviser for Applicant: The difficulty of applying English and Indian decisions is that there you have to value a fee simple, here we are dealing with something very much less than a fee simple. The land in question was alienated under the Land Enactment 1911 which gives the alienee "surface rights only" (section 11 of the Land Enactment 1911). The Land Code has made the position plainer by laying down (section 26) that "no land alienated under the provisions of this or any previous Land Enactment shall be mined as long as such alienation . . . . continues in force." The implied condition forbidding mining is "a condition restricting the use to which the land may be put" and such a condition must be taken into account in determining the amount of compensation (Section 29 (ii) (c) of the Land Acquisition Enactment). The boring results are entirely irrelevant.

Murray-Aynsley, J.—In this case the land sought to be acquired contains minerals of considerable value. But the minerals do not belong to the holder of the land. In view of the law governing the matter, contained in the Land Code and the Mining Code, I do not think that the holder of land on a non-mining title can derive any benefit from the presence of minerals. Unless he can secure a mining title they are of no use to him at all. I quite accept Major Hannay's evidence as to the minerals present, and the value they might have for someone with a mining title. Apart from Major Hannay's evidence, no evidence of value was given. In the circumstances I assess the value on an agricultural basis.

Under Section 29 (a) I award $600/-.
Deduction under sub-section
(b) Nil
Amount awarded under Sub-sec.
(c) Nil
(d) Nil
(e) $50/- for change of residence of Low Kee.
Applicant to have costs.

Order accordingly.

[APPELLATE CRIMINAL JURISDICTION]

POYSER, C.J., McELWAINE, C.J. (S.S.) & TERRELL, J.A. (MALAYA)

March 6, 1940.

PUBLIC PROSECUTOR v. S. MANICKAM.

[SELANGOR CRIMINAL APPEAL No. 42 of 1939]

Excise Enactment (Cap. 133) Ss. 13 (i), 67—possession of utensils which when assembled can constitute a still—whether an offence.

In order to support a charge under Section 13 (i) of the Excise Enactment for knowingly keeping a still for distilling intoxicating liquor it is not necessary to prove possession of a complete still. Evidence of possession of dismantled components of a still and of their past use for distilling purposes is sufficient to sustain a conviction under the section.

Lim Chu Pian v. Public Prosecutor,[1] over-ruled.

Case referred to:—

(1) *Lim Chu Pian v. Public Prosecutor,* 1 M.C. 158.

CRIMINAL APPEAL.

T. D. Wallace, Deputy Public Prosecutor, for Public Prosecutor.

Respondent in person.

Poyser, C.J.—This is an appeal by the Public Prosecutor against an acquittal. At the conclusion of Mr. Wallace's (Deputy Public Prosecutor) argument we allowed the appeal, but intimated that our reasons for so doing would be embodied in a written judgment.

The respondent was charged before the Magistrate, Kajang, on the 20th of November 1939, with the following offence:—

> "That you on 16.11.39 at about 3 p.m. at the 24th mile, Sungei Rinching, Semenyih, did knowingly have in your possession a still for the distillation of intoxicating liquor without being licensed in that behalf, an offence under section 13 (i) and punishable under section 67 of Cap. 133."

The evidence for the prosecution, which appears to have been accepted by the Magistrate in its entirety, established that the respondent had in possession a number of utensils which, assembled together, would form a complete still, and there was evidence that such utensils had been used for the distillation of intoxicating liquor.

The Magistrate acquitted the respondent, holding that he was bound by the case of *Lim Chu Pian v. P.P.,*[1]. The facts in that case were very similar to this. A number of articles were found in the accused's

possession which when fitted up constituted a still, and there was some evidence that such articles had been used for the purpose of distilling intoxicating liquor. The Magistrate convicted the accused but, on appeal, Mudie J. set this conviction aside holding that:—

> "The possession of a number of utensils which when fitted up can constitute a still is not sufficient evidence to sustain a conviction under section 13 (i) of the Excise Enactment for knowingly keeping a still for distilling intoxicating liquor. The articles did not constitute a still until they were subsequently put together after the seizure."

I am unable to agree with this decision if the facts were as they appeared to be. If there is evidence, as there was in this case, to establish beyond reasonable doubt that certain utensils, some of them concealed, when fitted up would constitute a still, and that they had in fact been used for that purpose, a conviction should have been recorded. It would be absurd to hold otherwise, for it would be almost impossible to prevent illicit distillation of intoxicating liquor, if a conviction could only be obtained when a complete still was found.

The appeal must, therefore, be allowed, and as there appears to be no doubt that the Magistrate did not believe the respondent's defence that his possession of these utensils was innocent, but acquitted him solely on account of the decision of Mudie J. above referred to, I think this Court may properly, under the provisions of section 42 of the Courts Enactment, find the respondent guilty of the offence with which he was charged.

We accordingly directed a conviction to be recorded, but only imposed a nominal sentence of a fine of $1/- or in default imprisonment till the rising of the Court, not because we considered that offences against the provisions of the Excise Enactment should be leniently dealt with, but because the respondent had already been put to considerable expense in coming to Ipoh for some days and, as Mr. Wallace told us, the Public Prosecutor instituted this appeal solely with the object of the Court of Appeal considering whether the case of *Lim Chu Pian v. Public Prosecutor,* above referred to was correctly decided, or not.

McElwaine, C.J. (S.S.)—We allowed this appeal and I now give my reasons for concurring in this result.

The appellant was tried upon a charge of knowingly having in his possession a still for the distillation of intoxicating liquor without a licence, an offence under section 13 (1) of the Excise Enactment (Chapter 133).

The evidence was to the effect that jars, drainers, pipes and vats were found on the appellant's premises, some of the articles being buried and some smelling of samsu or of fermented rice. Evidence was given that when some of these exhibits were assembled they formed a complete still.

In a statement from the dock the accused said that he had found these objects about a month before and removed them to his house.

The magistrate dismissed the charge following, as he was bound to do if it is applicable, a decision of Mudie J. in 1934 in *Lim Chu Pian v. Public Prosecutor*[1]. The present appeal has been referred to the Court of Appeal to consider whether or not a person who has in his possession the dismantled components of a still, has a still in his possession.

This appears to me to be entirely a question of fact.

I have no doubt that a person is in possession of a fire-arm though he keeps the barrel in his kitchen and the stock in his bedroom, if on assembling these components he has a serviceable weapon.

It is absurd to suggest that a desperado who is found with the chamber of a revolver in one pocket and the rest of the weapon in another, is not found armed.

In the case before Mudie J. it may well be that the prosecution case left a doubt as to the guilt of the accused and I quite agree with the learned judge when he said "it is not sufficient that it (the evidence) is consistent with his guilt; it must be inconsistent with any other rational conclusion"—a rational, not a fantastic conclusion.

In *Lim Chu Pian's case*[1] there was evidence that parts of the alleged components were being used for perfectly legitimate purposes, and when one finds a collection of ordinary domestic utensils which can, if brought into certain position in relationship with one another, constitute a still, it would be improper to say that the owner of these utensils possesses a still, unless the circumstances of the case indicate that the utensils are not used solely for innocent purposes.

If Mudie J. meant by the words "The articles did not constitute a still until they were subsequently put together" that a dismantled still is not a still within the meaning of the section, I am unable to agree with him. But in my opinion he decided nothing of

the sort. He proceeded "It was contended for the prosecution that these articles were the component parts of a still which had been dismantled. But in my view that is not so."

I think it quite clear that the learned judge did not decide that the dismantled components of a still are not a still. What he did decide was that a number of utensils do not become a still or parts of a still just because they could be put together and used for that purpose.

With that I entirely agree. Most moderately equipped houses contain fire places, baths, pots, jugs, drain pipes and other utensils which can be turned into a Heath Robinson still such as is used by most people who offend against the Excise Enactment.

Before the householder is convicted of keeping a still, there must be evidence from which it can be inferred beyond reasonable doubt that these innocent utensils are intended to be used as parts of a still. The same utensil may be used for an innocent purpose and for a guilty purpose a bath by day a vat by night.

In the case under appeal all the evidence—including the accused's statement from the dock—point to the exhibits being intended to be used as the components of a still. The accused said he found them in the lalang on the 15th October. If he did, he appears to have appropriated to his own use some one else's still.

Buried about his premises were several empty jars, some smelling of samsu. Near the kitchen fire place was the condenser of the still. The bottom of this condenser was clean and bright as the vapour of distillation would make it. There was a ring on it corresponding with the edge of an iron utensil which appeared to be used as a vat and which was also found, and this suggested that these two utensils were intended to be in contact.

A drainer for a still was found concealed between the wall and the eave of the house.

There was a hole in the side of the vat which served no domestic purpose. A drain pipe was also found. There was evidence that the drainer and the drain pipe had no domestic use, but both were useful as parts of a still and these four articles combined formed a complete still.

Of course, if the accused gives an explanation which the Court thinks may be true and which in fact raises a reasonable doubt as to his guilt, he is entitled to be acquitted. But it must be a reasonable doubt. In many cases the slightest explanation should suffice. But if the evidence shews that some utensils are not domestic utensils, or that they are used in conjunction when they are not so used for domestic purposes or if they smell of the product of distillation or if jars smelling of samsu are found buried on the premises, these are factors justifying the requiring of a full and adequate explanation.

There was abundant evidence upon which the magistrate could have convicted, and as he appears to have acquitted solely because, as he understood *Lim Chu Pian v. Public Prosecutor*,[1] there could be no conviction if the still was only seen in a dismantled condition, the Court thought it proper to reverse the acquittal and record a conviction rather than send the case back to the magistrate.

We imposed a small fine, not because the offence was not deserving of heavy punishment but because we considered that the respondent had been put to considerable expense in coming from Kajang to Ipoh and awaiting the hearing of the case in the latter town.

Terrell, J.A.—I have had the opportunity of reading the judgment of the learned President of the Court with which I agree and have nothing to add.

Appeal allowed.

[ORIGINAL CIVIL JURISDICTION]

MURRAY-AYNSLEY, J.

January 23, 1940.

LIEW SIEW YIN (f) & ANOTHER
v.
LEE PAK YIN & ANOTHER.

[PERAK CIVIL SUIT No. 136 of 1939]

Land Code (Cap. 138) S. 166—nature of claim which entitles a person to present a caveat—land subject to trust for sale under a will—person entitled to a contingent interest in proceeds of sale entitled to enter caveat.

The plaintiffs in this case claimed as the widow and residuary beneficiaries of one Lim Seng Chew against the defendants, as executors of the will of the said Lim Seng Chew administration of the estate and other relief including the appointment of a Receiver.

A Receiver was appointed by the Court and, by an interlocutory summons the Receiver applied to the Court for directions on various matters including directions as to whether the Receiver could claim a Certificate of Production relating to Mining Leases Nos. 9919, 9920, 11649, 11073 and 12146 Ulu Kinta and the tributes of the